

ORDINANCE NO. 12-39

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 58 ENTITLED "OFFENSES" OF THE CODE OF ORDINANCES AND IN PARTICULAR, ARTICLE I. ENTITLED "PROHIBITED CONDUCT", BY CREATING A NEW SECTION §58-74 ENTITLED "SIMULATED GAMBLING IN THE CONDUCT OF GAME PROMOTIONS PROHIBITED" PROHIBITING THE USE OF CASINO-STYLE SIMULATED ELECTRONIC GAMES IN THE CONDUCT OF A GAME PROMOTION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there has been a proliferation across the State of Florida of businesses engaging in game promotions or sweepstakes utilizing simulated casino-style games to reveal prizes in connection with the sale of internet access purportedly compliant with Section 849.094, Florida Statutes that threatens the quality of life of the residents of the City of Hialeah;

WHEREAS, the legality of the operation of internet sweepstakes cafes is in doubt statewide given the lack of uniformity in interpretation, application, and enforcement of the law;

WHEREAS, the use of casino-style simulated games to reveal winning sweepstakes entries eligible for cash prizes is inherently deceptive causing participants to play as if they were engaging in gambling activities prohibited by Florida law or otherwise leading participants to believe they are engaging in lawfully permitted gaming activity in these back-door-casinos;

WHEREAS, patrons of internet sweepstakes cafes are drawn by the appeal of engaging in pseudo-gambling and use their internet time to access the casino-style simulated games instead of accessing the internet for legitimate purposes; and

WHEREAS, it is in the best interest of health, safety and general welfare of the community and the residents of the City of Hialeah to prohibit simulated gambling through participation in a sweepstakes in connection with any consumer product within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 58 entitled "Offenses" of the Code of Ordinances of the City of Hialeah, Florida, particularly Article I. Prohibited Conduct, is hereby amended to read as follows:

Chapter 58

OFFENSES

ARTICLE I. PROHIBITED CONDUCT

* * *

Sec. 58-74. Use of Simulated Gambling in the Conduct of Game Promotions Prohibited.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. However, nothing in this article may be construed contrary to state law.

Game promotion or sweepstakes shall be given the same meaning as the term "Game promotion" is defined in §849.094, Florida Statutes, as amended from time to time.

Device shall mean any mechanical or electronic contrivance, computer, terminal, video or other equipment, that may or may not be capable of storing, operating, or downloading games from a central server system, machine, computer or other device or equipment, including any associated equipment necessary to conduct its operation, that is used to display or run a computer simulation of any game or otherwise allow the participant or promoter to play, participate in, operate or interact with the game.

Simulated gambling shall mean playing or engaging in games whose content, theme, design or graphics is that of games customarily played in a casino, including but not limited to slot machines, poker, bingo, craps, or keno and any other game associated with or which could be associated with gambling, and is the means utilized to

display, disclose or reveal whether the participant is to receive or become entitled to receive a payout, payoff, jackpot or prize.

Payout, payoff, jackpot or prize shall mean cash, cash equivalents such as gift cards, debit cards, credit cards, or other credit with an intrinsic monetary value, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether made automatically from the machine or manually; actual merchandise or any item of value.

(b) Prohibition. It is unlawful for any person to conduct a game promotion or sweepstakes in connection with the promotion or sale of a consumer good, product, or service where the game promotion or sweepstakes awards a payout, payoff, jackpot or prize and involves the use of any device that is operated, played or otherwise interacted with by the participant or promoter that allows the participant to play casino-style games or engage in simulated gambling as a means to display, disclose or reveal whether the participant is to receive or become entitled to receive a payout, payoff, jackpot or prize.*

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered, as appropriate, to conform to the uniform numbering system of the Code.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.


This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

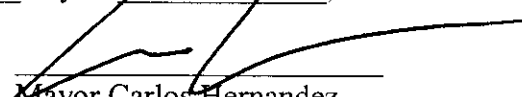
PASSED AND ADOPTED this 26th day of June, 2012.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041

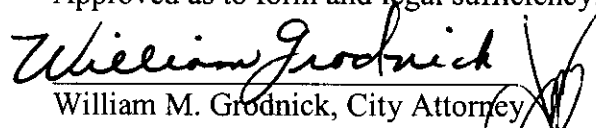
Isis Garcia-Martinez
Council President

Attest: PRIOR TO FINAL READING Approved on this 28th day of June, 2012.


David Concepcion, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

*~~Strikethrough indicates deletion.~~ Underline indicates addition.

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Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".